In the High Court of Punjab and Haryana at Chandigarh

FAO No.1807 of 1997
Date of decision: 22 -09-2006

Ranjit Kaur .....Appellant

Versus

Chhinderpal Singh & others .....Respondents

CORAM: Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr. Vikas Kumar and
Mr.S.K.Arora, Advocate, for the appellant.
Mr. Neeraj Khanna, Advocate, for respondent No.11
Mr. Paul S.Saini, Advocate, for respondent No.13.

VINOD K.SHARMA,J.

This order will dispose of FAO Nos.1807 and 2047 of 1997 arising out of the award dated 30-5-1997 passed by the Motor Accident Claims Tribunal, Faridkot.

By way of present appeals, the challenge is to the award passed by the Motor Accident Claims Tribunal, Faridkot (hereinafter referred to as the 'Tribunal') vide which claim petition No.2 of 3-1-1992 filed by the claimants - Chhinderpal Singh and other was allowed against the appellant herein and compensation of Rs. 1,39,500/- was awarded. The liability was fixed jointly and severally between respondent Nos. 1 & 2 in the claim petition i.e Lakhwinder Singh, driver of jeep No. PJK 5773 and Ranjit Kaur wife of Pritam

Singh, the owner of the jeep. The claimants were further held entitled to interest @ 12% per annum on the said amount from the date of filing of the claim petition till realisation. It was further ordered that out of the said amount, a sum of Rs. 69,500/- was to be paid to Kartar Kaur, claimant No.6 and the remaining amount was to be paid to all the remaining claimants in equal shares. The claim petition filed against respondent Nos. 3 to 5 was dismissed. The claim petitions filed by Ranjit Kaur and Lakhwinder Singh subject matter of FAO No. 2047 of 1997 were also ordered to be dismissed.

Chhinderpal Singh and others had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 for compensation on account of death of Shri Gurbachan Singh. Whereas Ranjit Kaur and Lakhwinder Singh had filed claim petition on account of damage caused to Jeep No. PJK 5773 and on account of injuries received by Lakhwinder Singh.

The brief facts of the case are that on 5th of November, 1991, Gurbachan Singh deceased was travelling in Jeep No. PJK5773 driven by Lakhwinder Singh son of Pirthi Singh, resident of village Hardiale-ana. They were coming from village Hardiale-ana to village Buraj Sidhwan. At about 4.30 PM when the jeep reached near Spinning Mills, Malout, a truck bearing registration No. PUU 9322 came from the opposite side at a very high speed being driven rashly and negligently and struck into the jeep, as a result of which, jeep over-turned and Gurbachan Singh received head injury and other

bodily injuries. On account of the injuries suffered by him, he was admitted to Civil Hospital, Malout, from where he was transferred to Muktsar. After remaining for 3 days at Muktsar hospital, the deceased was shifted to DMC, Ludhiana, where he remained under treatment for 13 days and finally succumbed to the injuries. Shri Gurbachan Singh was stated to be 55 years of age at the time of his death.

It was pleaded in the claim petition that the father of the deceased had died at the age of 90 years and there was no report of any disease in the family of the deceased and in case the said accident had not occurred, he would have lived for another 35-40 years. It was also claimed that the deceased was hard working and able bodied person and was running all the affairs of the family. He owned 11 acres of land which he used to give on yearly lease basis @ Rs. 5,000/- per acre and his monthly income was stated to be Rs. 5000/-. It was further claimed that a sum of Rs. 40,000/- was spent on medicines and treatment of the deceased.

Respondent No.1 and 2 in the claim petition filed a joint written statement admitting the factum of the accident as pleaded by the claimants and it was claimed that respondent No.1 had also received multiple injuries and was taken to Civil Hospital, Malout, from where after giving first aid treatment, he was shifted to GGS Medical College and Hospital, Faridkot, where he remained under treatment for 9 months. It was also averred that he was still under treatment and accordingly respondent Nos.1 and 2 also filed claim

petition against the truck owner and insurance company for compensation.

Respondent No. 3 i.e. Oriental Insurance Company Limited was proceeded against ex-parte.

Respondent No.4 Gamdoor Singh, the owner of truck No. PUU 3993 in his written statement, took a stand that no accident had taken place with the truck as alleged by the claimants. However, he claimed that the truck was insured with the New India Assurance Company Ltd., Malout.

The New India Assurance company Ltd., Malout, pleaded in its reply that as per DDR dated 5-11-1991 got recorded by Lakhwinder Singh- a close relative of deceased Gurbachan Singh, it was alleged that the accident had occurred due to fault in the steering wheel of the jeep and, therefore, there was no fault of the driver of the truck. It was claimed that the Insurance Company was un-necessarily arrayed as respondent and no responsibility could be fixed upon it. It was also pleaded that the petition was bad for non-joinder of necessary parties as the driver of the truck was not impleaded as respondent. It was further claimed that the driver of the truck had no valid or effective licence at the time of alleged accident and that there was violation of the terms and conditions of the insurance policy. It was also claimed that the truck had no route permit, registration certificate and fitness certificate at the time of the accident. The claim of Rs. 4 lacs was challenged for want of better particulars.

It was further pleaded that in case the Tribunal finds that the driver of the truck was negligent, in that eventuality, it was a case of contributory negligence. The quantum of compensation as claimed was alleged to be exaggerated on the ground that legal representatives of the deceased were getting less money as lease from the land left behind by Gurbachan Singh deceased.

In the claim petition filed by Ranjit Kaur, it was claimed that on 5-11-1991 at about 2.30 PM Lakhwinder Singh son of Pirthi Singh along with Gurbachan Singh, the brother of his grand father was coming from village Hardiale-ana to Buraj Sidhwan and when they half kilometer away from Spinning Mills, Malout, and were going on correct side of the road, at that time a truck bearing registration No.PUU 9322 driven by Gamdoor Singh son of Jag Singh, respondent No.1, resident of village Mahuana came in a rash and negligent manner and struck with the jeep. As a result thereof, jeep driver Lakhwinder Singh and other occupant of the jeep namely Gurbachan Singh received multiple injuries and they were taken to Civil Hospital, Malout, where they were given first aid. Thereafter Lakhwinder Singh was referred to GGS Medical College, Faridkot while Gurbachan Singh was referred to DMC, Ludhiana, where he died on 21-1-1992. It was claimed that in the said accident jeep was totally damaged and its engine and chassis were completely smashed. On account of this, it was claimed that, she suffered a loss of Rs. 52,975/- i.e. Rs. 32,975/- on account of damage caused to the jeep and Rs. 10,000/- on account

of mental agony and Rs. 10,000/- as business loss as she was deprived of its use. It was also alleged that Gamdoor Singh was rash and negligent in driving the said truck.

Shri Gamdoor Singh in his written statement claimed that the claim petition filed by Ranjit Kaur was time barred and all other averments were also denied.

On the pleadings of the parties, following issues were framed:-

(Issues in claim petition Chhinderpal Singh vs. Lakhwinder Singh.)

"1. Whether Gurbachan Singh died due to rash and and negligent driving of truck No. 9322 driven by Gamdoor Singh respondent ?OPP

2. Whether the claimants are the legal heirs of the deceased. ?OPP

3. Whether the driver of the truck and jeep had no valid and effective driving licence at the time of alleged accident. ?OPR

4. Whether truck No. PUU 9322 had no valid route permit, registration certificate and fitness certificate at the time of alleged accident ? OPR.

5. To what amount, if any, the claimants are entitled and from whom? OPP

6. Relief."

(issues in claim petition Ranjit Kaur Vs. Gamdoor Singh.)

1. Whether Jeep No.PJK 5773 owned by the claimant suffered damage due to rash and negligent driving of truck No. PUU 9322 driven by Gamdoor

Singh? OPP

2. Whether claim petition is bad for non-joinder of necessary parties ? OPP
3. Whether drivers of the truck and jeep had no valid and effective driving licences at the time of accident. ? OPR
4. Whether truck No. PUU 9322 had no valid route permit, registration certificate and fitness certificate at the time of alleged accident ? OPR
5. To what amount, if any, claimant is entitled and from whom ? OPP
6. Relief."

Learned Tribunal on issue No.1 held that the accident had occurred on account of development of defect in the steering wheel of the jeep and not on account of rash and negligent driving of the truck in question by Gamdoor Singh and consequential death of Gurbachan Singh and damage to the jeep and injuries to Lakhwinder Singh were the result of the accident in the manner held above.

On issue No.2, the claimants were held to be legal heirs of the deceased whereas on issue No.3, it was held that the driver of the truck had a valid and effective driving licence at the time of the accident. Issue No.4 was also decided against the Insurance Company.

On issue No.5, it was held that the claimants were entitled to a sum of Rs. 1,39,500/- as compensation and accordingly award as referred to above was passed.

In the claim petition filed by Ranjit Kaur, on issue No.5, it was held that as the truck was not held responsible for the accident, no

amount of compensation was payable to her.

Mr.Vikas Kumar and Mr. S.K.Arora, learned counsel appearing for the appellant contended that findings recorded on issue No.1 by the learned tribunal cannot be sustained. The contention of the learned counsel for the appellant was that the learned Tribunal has found the accident to have occurred on account of mechanical failure of the jeep while there was no such issue framed by the learned Tribunal and, therefore, the findings are beyond the issues as framed by the Tribunal.

Learned counsel for the appellant further contended that the learned Tribunal did not consider the evidence led by the parties in support of their respective claims, but decided the case merely on the basis of the DDR got registered by Lakhwinder Singh, AW-6. In support of this contention, learned counsel for the appellant placed reliance on the judgment of this Court in the case of V**irat SamaVs. Mohan Lal, 1994 (1) PLR 82** to contend that FIR cannot be a substitute for evidence giving exhaustive version of the occurrence and the Tribunal was bound to consider the statements made on solemn affirmation while appearing as witnesses before the Tribunal. He also placed reliance on a Division Bench judgment of this Court in FAO No. 1950 of 1995 titled as **Amolakdeep Singh & another Vs. The Punjab State and another** decided on 19-7-1996.

Learned counsel for the appellant thereafter made reference to the pleadings of the parties as well the statement made by

Shri Lakhwinder Singh, AW-6, wherein he had categorically stated that truck No. PUU 9322 came from the opposite side which was being driven in a zig zag manner and struck against the jeep which was badly damaged. He also stated in examination-in-chief that DDR Exhibit A-33 was not read over to him and he had only signed it. The suggestion that the accident had occurred due to mechanical defect in the jeep was also denied. The other suggestion that there was no fault of the truck driver was also denied. As against this evidence, Shri Gamdoor Singh had appeared as RW-1. In his statement, he claimed that the jeep was being driven in a zig zag manner and it looked that the driver of the jeep was in a drunken condition. It was claimed that the jeep had struck against the truck as a result of which the truck over turned. This statement of Shri Gamdoor Singh was contrary to the stand taken by him in his written statement, where he had denied the factum of the accident. The contention of learned counsel on the basis of this statement was that the learned Tribunal, therefore, was wrong in coming to the conclusion that the accident had occurred due to mechanical defect in the jeep which is not borne out from the evidence on record as none of the parties has come up with that plea and, therefore, the reliance on DDR to record a finding cannot be sustained.

On the other hand, Mr. Paul S.Saini, learned counsel appearing for respondent No.13 - Insurance company, placed reliance on the judgment of this Court in **Dharam Chand V. Shiv Pal and**

others, 1966 A.C.J. 319 to contend that the learned Tribunal was right in rejecting the claim petition by holding that the accident had occurred on account of mechanical failure. According to him, the statement made before the Police that the occurrence was accidental had to be believed as it was not open to the claimants to subsequently turn round and allege negligence to maintain a civil action for compensation.

Learned counsel for the respondent No.13 further placed reliance on the judgment of the Hon'ble Supreme Court in **Minu B. Mehta and another V. Balkrishna Ramchandra Nayan and another, 1977 A.C.J.118** to contend that in order to sustain a plea that the accident was due to the mechanical defect the owner must raise a plea that the defect was latent and not discoverable by the use of reasonable care. Paras 14 and 15 of the said judgment reads as under:-

> "14 In order to sustain a plea that the accident was due to the mechanical defect the owners must raise a plea that the defect was latent and not discoverable by the use of reasonable care. The owner is not liable if the accident is due to a latent defect which is not discoverable by reasonable care. The law on this subject has been laid down in Henderson v. Henry E. Jenkins & Sons. In that case its lorry driver applied the brakes of the lorry on a steep hill but they failed to operate. As a result the lorry struck and killed a man who was emerging from a parked vehicle. The defence was that brake failure was due to latent defect not discoverable by reasonable care on

driver's part. It was found that lorry was five years old and had done at least 1,50,000 miles. The brakes were hydraulically operated. It was also found after the accident that the brake failure was due to steel pipe bursting from 7 mm- to 1 mm. The corrosion had occurred where it could not be seen except by removing the pipe completely from the vehicle and this had never been done. Expert evidence showed that it was not a normal precaution to do this if, as was the case, the visible parts of the pipe were not corroded. The corrosion was unusual and unexplained. An expert witness said it must have been due to chemical action of some kind as exposure to salt from the roads in winter or on journeys near the sea. The House of Lords ... held that the burden of proof which lay on the defendants to show that they had taken all reasonable care had been discharged. The defect remained undiscovered despite due care. As the evidence had shown that something unusual had happened to cause this corrosion it was necessary for the defendants to show that they neither knew nor ought to have known of any unusual occurrence to cause the breakdown. (see Bingham's Motor claims Cases Seventh Ed., p.219)

15. The burden of proving that the accident was due to a mechanical defect is on the owners and it is their duty to show that they had taken all reasonable care and that despite such care the defect remained hidden. In this case in the written statement all that is pleaded is that the axle brake ring of the lorry came out and the driver lost control of the motor lorry and that the defect can develop in a running vehicle resulting in the driver's losing control of the steering wheel. Though it was stated that all precautions were taken to keep the lorry in a roadworthy

condition it was not specifically pleaded that the defect i.e. the axle brake ring coming out, is a latent defect and could not have been discovered by the use of reasonable care. This lack of plea is in addition to the lack of evidence and the fact that the defence set up has been rightly rejected by the Tribunal."

I have considered the arguments raised by the learned counsel for the parties and find no force in the contentions raised by the learned counsel for the respondents. The reliance of respondent No.13 on the judgment of this Court in **Dharam Chand's case (supra**can be of no help to him as in the said case it has nowhere been heldthat an importance had to be only given to the statement before the police. In said judgment the facts of the case were that there was no evidence on record to establish that the accident was due to any recklessness or negligence on the part of the driver. In any case the judgment relied upon by the appellant herein clearly establishes that the Tribunal had to decide the case on available evidence and once the evidence had come on record that the accident had occurred due to negligence on the part of the truck driver, the Court could not reject the same merely be making a reference to DDR lodged by the driver of the jeep especially when it was stated by him that he had not read the contents of the DDR. Even otherwise, the Division Bench of this court in FAO No.1950 of 1995 (supra) has clearly held that the Tribunal had to decide the matter on the available evidence. The findings of the learned Tribunal on issue No.1 otherwise also cannot be sustained in

view of the judgment of the Hon'ble Supreme Court in **Minu B. Mehta's case (supra)** relied upon by the counsel for respondent No.13, as admittedly, in the present case, there is no plea from either of the parties regarding the mechanical defect in the vehicle. Thus, the findings of the learned Tribunal on issue No.1 are reversed and it is held that the accident had occurred due to rash and negligent driving of driver of the truck.

In view of the reversal of the findings on issue No.1, it is held that the claimants in claim petition No.2 of 3.1.1992 i.e. Chhinder Pal and others shall be entitled to compensation to the tune of Rs. 1,39, 500/- along with interest as granted by the learned Tribunal from respondent Nos. 12 and 13 herein and and they shall be jointly and severally liable to pay the compensation to the claimants as assessed by the Tribunal.

In view of the reversal of findings on issue No.1,FAO No.2047 of 1997 is also allowed and the appellant herein is held entitled to a sum of Rs. 32,975/- on account of damage to the jeep. However, she is not entitled to compensation on account of mental agony and business loss claimed by her.

Accordingly, both the appeals are allowed in the terms indicated above.

September 22 2006 **(VINOD K.SHARMA)**
'dls' **JUDGE**